UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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REALTIME DATA, LLC d/b/a IXO,	)	
	)	
Plaintiff,	)	Case No. 1:11-cv-6696-KBF
	)	1:11-cv-6701-KBF
vs.	)	1:11-cv-6704-KBF
	)	
MORGAN STANLEY, ET AL.,	)	JURY TRIAL DEMANDED
	)	ECF Case
Defendants.	)	
	)	

**DEFENDANTS' SUPPLEMENTAL SUBMISSION IN SUPPORT OF PARTIAL
SUMMARY JUDGMENT OF INVALIDITY OF THE PATENTS-IN-SUIT FOR
FAILURE TO SATISFY THE DEFINITENESS AND WRITTEN DESCRIPTION
REQUIREMENTS OF 35 U.S.C. § 112**

Defendants hereby respectfully submit supplemental evidence in support of the pending

motion for summary judgment that claims 1 and 8 of U.S. Patent 7,714,747 ("the '747 patent")

and claim 1 of U.S. Patent 7,777,651 ("the '651 patent") are invalid for lack of written

description support. (11-6696, Dkt. No. 428.)

On June 4, 2012, Defendants deposed Mr. Frank V. DeRosa, the patent attorney who

wrote the applications leading to all three of the patents in suit, and who also wrote the

application leading to Realtime's earlier U.S. Patent 6,195,024 ("the '024 patent") (Decl. of

Gregory H. Lantier ("Lantier Decl."), Ex. A). The Court may recall that the application that

issued as the '024 patent (filed December 11, 1998) is the oldest in the '747 patent family.

(Defs' Tutorial at 13.) In a continuation-in-part application dated October 29, 2001, the

inventors added material to the '024 patent application. That application eventually issued as

U.S. Patent No. 6,624,761 ("the '761 patent"). The '761 patent shares a common specification

with the '747 patent. As revealed during the deposition of Mr. DeRosa and discussed in further

detail below, there are very few differences between the specifications of the '024 and '747

patents, and none of the added material include any discussion of "content dependent" decoders

or a "descriptor" that indicates whether a content dependent encoder was used during

compression. Accordingly, Mr. DeRosa confirms that claims 1 and 8 of the '747 patent and

claim 1 of the '651 patent are invalid for failing the written description requirement. *See Ariad*

Pharms., Inc. v. Eli Lilly & Co., 598 F.3d 1336, 1351 (Fed. Cir. 2010) (the test for written

description is "whether the disclosure of the application relied upon reasonably convey to those

skilled in the art that the inventor had possession of the claimed subject matter as of the filing

date.").

I.   The '024 Patent Discloses Decoders and Descriptors For Use With Only A Content Independent Data Compression and Decompression System.

According to Mr. DeRosa, the figures and written description of the '024 patent are

limited to a content *independent* data compression and decompression system. (*See*, *e.g.*, Feit

Decl. Ex. B, DeRosa Tr. 58:24-60:22 (testifying that Figures 2, 4, 6, 8 and 9 of the '024 patent

are "block diagrams[s] of a content independent data compression system"); *id.* at 60:23-61:07

(testifying that Figure 11 is a "block diagram of a content independent data decompression

system"); *see also* '024 Patent, 6:38-40 ("The present invention is directed to systems and

methods for providing content independent lossless data compression and decompression").)

The compression methods and system disclosed in the '024 patent had nothing to do with

content *dependent* data compression and decompression. Indeed, when asked "[d]id the

invention of this patent [the '024 patent] have anything to do with content dependent data

compression," Mr. DeRosa said that "figure 1 [which the patent labels as Prior Art] was a

description of what was presumed to be content dependent, and the rest were descriptions of what was presumed to be content independent."[1] (DeRosa Tr. 55:13-21.)

Since the systems and methods of the '024 patent provide *only* content *independent* data compression, there can be no dispute that the '024 patent does not provide written description support for "decompressing the data block with a . . . decoder utilizing content *dependent* data decompression, if the descriptor indicates the data block is encoded utilizing content *dependent* data compression," which are the at-issue limitations in claim 1 of the '651 patent and claims 1 and 8 of the '747 patent. Therefore, to the extent there is any support for "content dependent" decoders and descriptors, *it must derive from material that was added as part of the continuation-in-part application*. According to Mr. DeRosa, such new material was limited to Figures 13A though 18D and col. 15, line 64 through col. 26, line 34 of the '761 patent, which corresponds to col. 15, line 50 through col. 26, line 8 of the '747 patent. (DeRosa Tr. 64:04-64:24, 69:04-15.)[2]

II.   The '747 Patent Describes the Content Independent Decoders and Descriptors of the '024 Patent, and Nothing More.

Based on Mr. DeRosa's testimony, it is clear that the '747 patent (which the '651 patent incorporates by reference) discloses two different types of systems. The first is the content *independent* system of the '024 patent, which is represented in Figures 2-12 and its corresponding portions of the patent specification. (*See* DeRosa Tr., 63:13-64:03, 78:13-80:12; '024 patent, 5:52-6:14, 7:4-16:14.) The second is what the '747 patent identifies as "other

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[1] DeRosa further testified that "content independent data compression," which Realtime's expert says has the same meaning as "content dependent data compression," is in fact "different." (DeRosa Tr. 62:16-23.)

[2] Lantier Decl. Ex. C is DeRosa Deposition Exhibit 14. The exhibit compares the specifications of the '024 and '747 patent using a standard compare-write computer program. This was given to Mr. DeRosa during his deposition to use as he wished in comparing the two patents. (*See* DeRosa Tr. 78:13-79:08).

embodiments" in which "data compression is achieved using a *combination* of content *dependent* data compression and content independent data compression." ('747 patent, 15:50-53.) This *combination* content independent/dependent system was not disclosed in the '024 patent, but was added to the continuation-in-part application that eventually led to the '747 patent. This combination system is represented in the new material identified by Mr. DeRosa, *i.e.*, Figures 13A through 18D and col. 15, line 50 through col. 26, line 8 of the '747 patent.

However, *none of the added material* discloses anything about any decoders that might be used in the "combination" content dependent/content independent system of Figs. 13A through 18D. In fact, the added material relating to the combination system does not even include the word "decode" in any form. The only decoders shown (Figs. 11-12) or described (14:39-15:49) anywhere in the '747 patent are the decoders that are used with the content independent system. Accordingly, the disclosed decoders in the '747 (and '651) patents are the same content independent decoders disclosed in the '024 patent, and there is no discussion or disclosure of any decoders used with the combination system that was added when the applications that led to the '747 and '651 patents were filed. Plaintiff's expert, Dr. Shamos, has stated that such "conventional decompression methods," as those disclosed in the '024 patent, "would fail at least because they would not be able to make use of the descriptors in the data stream." (11-6696, Dkt. No. 447, ¶ 6.) Accordingly, there is no dispute that there is no disclosure of decoders that could be used in connection with the combination content dependent/content independent system discussed in the '747 and '651 patents.

Likewise, Mr. DeRosa's testimony confirms that the '747 patent does not add anything with respect to the descriptors discussed and described in the '024 patent. Indeed, the language used in both the '024 and '747 patents to describe the descriptors used in the content

independent data compression system of Figs. 2-12 (8:41-43, 53-56, 14:54-59) is exactly the

same as that used in the '747 patent to describe those used in the *combined* content

independent/content *dependent* systems of Figs. 13A-18 (18:51-54, 63-66; 21:36-39, 48-51;

24:28-31, 40-44; 25:34-37, 47-50). The descriptors used in the former system quite clearly

cannot "indicate" that content dependent compression was used to encode the data; and there is

no disclosure of anything else in the descriptor that will do so. Accordingly, there is no

disclosure in the patent for a "descriptor" that indicates whether the data was encoded utilizing

content dependent ("D" encoders) or content independent ("E" encoders) data compression.

Accordingly, Mr. DeRosa's testimony confirms that the disputed claims are invalid.

Dated: June 13, 2012   Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was served electronically on June 13, 2012 on all counsel of record.

/s/ Gregory H. Lantier_____
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